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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,398	11/14/2003	James W. Lillard JR.		6848
7590	07/14/2006			EXAMINER
Glenna Hendricks, Esq. P.O. Box 2509 Fairfax, VA 22031-2509			HALVORSON, MARK	
			ART UNIT	PAPER NUMBER
			1642	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/712,398	LILLARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Halvorson	1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 11/14/2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-14 are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-14 are pending.

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group 1, claims 1-8, 10, 11, drawn to a method of treating a host having a condition arising from malignancy comprising determining the level of protein expression of at least one chemokine and administration of a composition containing at least one antibody which binds a chemokine known to be overexpressed, wherein the level of protein expression of the chemokine is determined, classified in class 514, subclass 2.

Group 2, claims 1-8, 10, 11, drawn to a method of treating a host having a condition arising from malignancy comprising determining the level of nucleic acid expression of at least one chemokine and administration of a composition containing at least one antibody which binds a chemokine known to be overexpressed, wherein the level of protein expression of the chemokine is determined, classified in class 514, subclass 2.

Group 3, claims 9, drawn to a method of inhibiting malignant cell migration by administering a migration-inhibiting effective amount of at least one antibody to bind to a chemokine, classified in class 514, subclass 2.

Group 4, claims 12-14, drawn to a method of identifying malignancy by exposing multiple samples to different antibodies which bind to a particular chemokine, classified in class 435, subclass 7.23.

The inventions are distinct, each from the other because of the following reasons:

The methods of Groups 1-4 are materially distinct methods which differ at least in objectives, method steps and reagents. Group 1 is drawn to a method of treating a host having a condition arising from malignancy comprising determining the level of protein expression of at least one chemokine and administration of a composition containing at least one antibody which binds a chemokine known to be overexpressed. Group 2 is drawn to a method of treating a host having a condition arising from malignancy comprising determining the level of nucleic acid expression of at least one chemokine and administration of a composition containing at least one antibody which binds a chemokine known to be overexpressed. Group 3 is drawn to a method of inhibiting malignant cell migration by administering a migration-inhibiting effective amount of at least one antibody to bind to a chemokine. Group 4 is drawn to a method of identifying malignancy by exposing multiple samples to different antibodies which bind to a particular chemokine. Each of the groups employ different reagents to accomplish different objectives that comprise different method steps. Searching all of the groups with all of the different objectives, method steps, and reagents would invoke a high burden of search.

### ***SPECIES ELECTION***

3. Groups 1-4 are further subject to election of a single disclosed species.

(i). Groups 1-4 are subject to election of at least one of the disclosed species.

Claims 1, 9, and 12 are generic to a plurality of disclosed patentably distinct species of **antibodies to chemokines**, the amounts being (a) one antibody or (b) more than one antibody.

(i)(A). Species (a) and (b) above are further subject to restriction because claims 1, 9, 12 are generic to a plurality of disclosed patentably distinct species of **antibodies to chemokines**, the antibodies being to **CXCR1, CXCR2, CXCL1, CXCL2, CXCL3**,

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**CXCL5, CXCL6, CXCL7, CXCL8, CXCL12, CXCR5a, CXCR5b, CXCL13, CXCR6, CXCL16, CCL16, CCL25, CCL25-1, CCL25-2, CX3CR1, or CX3CL1.**

If applicant selects more than one species applicant must **identify the combination of species** to be examined.

Applicant is reminded that the selected combination must have support in the specification.

(ii) Claims 1, 9, and 12 are generic to a plurality of disclosed patentably distinct species of **chemokines**, the amounts being (a) one chemokine or (b) more than one chemokine.

(ii)(A). Species (a) and (b) above are further subject to restriction because claims 1, 9, 12 are generic to a plurality of disclosed patentably distinct species of **chemokines**, the chemokines being **CXCR1, CXCR2, CXCL1, CXCL2, CXCL3, CXCL5, CXCL6, CXCL7, CXCL8, CXCL12, CXCR5a, CXCR5b, CXCL13, CXCR6, CXCL16, CCL16, CCL25, CCL25-1, CCL25-2, CX3CR1, or CX3CL1.**

If applicant selects more than one species applicant must **identify the combination of species** to be examined.

Applicant is reminded that the selected combination must have support in the specification.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of

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record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halvorson, PhD whose telephone number is (571) 272-6539. The examiner can normally be reached on Monday through Friday from 8:30am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew, can be reached at (571) 272-0787. The fax phone number for this Art Unit is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER